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Xio Interactive Inc.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TETRIS HOLDING, LLC and THE
TETRIS COMPANY, LLC,

Plaintiffs,

-against-

XIO INTERACTIVE INC.,

Defendant.

Civil Action No. 3:09-CV-6115 (FLW) (DEA)

Honorable Freda L. Wolfson, U.S.D.J.
Honorable Douglas E. Alpert, U.S.M.J.

**DECLARATION OF SONALI D. MAITRA
IN SUPPORT OF XIO INTERACTIVE INC.'S
MOTION FOR SUMMARY JUDGMENT
OF NON-INFRINGEMENT**

I, Sonali D. Maitra, declare as follows:

1. I am an attorney with the firm of Durie Tangri LLP, attorneys for Defendant Xio Interactive, Inc., in this action. The factual assertions made herein are made of my personal knowledge and, if called upon to do so, I could and would testify competently thereto.

2. On September 27, 2011, I purchased a copy of *Tetris Link* at a Wal-Mart store located in Union City, California. I reviewed and played this game. *Tetris Link* is a board game played on a 10 by 20 grid, whereby players manipulate seven brightly-colored tetrominos, whose blocks are individually delineated, and which rotate and move laterally and downwards. In addition, *Tetris Link* bears a copyright notation dating to 1985, which specifically states: "Tetris ® & © 1985-2011 Tetris Holding. Tetris logos and Tetriminos are trademarks of Tetris Holding. Trade dress owned by Tetris Holding. Licensed to the Tetris Company. Tetris Game Design by Alexey Pajitnov. Tetris Logo Design by Roger Dean."

3. Plaintiffs produced copies of the following games: *Tetris Version 0* (TETRIS-XIO-0000047), *Tetris Version 1* (TETRIS-XIO-0000047), *Tetris Version 2* (TETRIS-XIO-0000047), *Tetris* (TETRIS-XIO-0000047), *Tetris NES Edition* (TETRIS-XIO-0000048), *Tetris Game Boy* (TETRIS-XIO-0000049), *Tetris Zone* (TETRIS-XIO-0000050), *Tetris (EA Multiplayer)* (TETRIS-XIO-0000051), *Tetris Evolution (Xbox360)* (TETRIS-XIO-0000052), *Tetris (iPhone)* (TETRIS-XIO-

0000053), *Tetris Pop* (TETRIS-XIO-0000054-55), *Tetris DX* (TETRIS-XIO-0000056), and *Tetris Mission 2009* (TETRIS-XIO-0000057). I have inspected these games and conclude that the starting orientation for the tetrominos in these games is not consistent across games. In addition, Exhibit 1, attached hereto, is a true and correct copy of a screen shot of *Tetris Zone*. The red numbered circles have been added.

4. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiffs' First Amended Complaint for Copyright Infringement, False Designation of Origin, and Unfair Competition filed in this action on December 10, 2009.

5. Attached hereto as Exhibit 3 is a true and correct copy of the following page from Plaintiffs' website: www.tetris.com/history/index.aspx (downloaded Sept. 27, 2011).

6. Attached hereto as Exhibit 4 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, page 17:20-23, taken in this action on January 13, 2011.

7. Exhibit 2 to the deposition of Henk Rogers, taken in this action on February 4, 2011, is the board game *Universe* published by Parker Brothers with a copyright date of 1967. In this game, players rotate brightly-colored pentominos (of which the squares are individually delineated) and fit them on a grid that ranges from ten by ten to a larger space, depending on the number of players.

8. On September 25, 2011, I took a photo of Exhibit 2, which is attached hereto as Exhibit 6.

9. Attached hereto as Exhibit 7 is a true and correct copy of Plaintiffs' Third Amended Supplemental Written Objections and Responses to Xio Interactive Inc.'s First Set of Interrogatories, served on Defendant herein on February 15, 2011.

10. Attached hereto as Exhibit 8 is a true and correct copy of Exhibit 1 to the deposition of Desiree Golen, taken in this action on January 28, 2011.

11. Attached hereto as Exhibit 9 is a true and correct copy of XIO-DG-0002058, produced by Defendant in this action.

12. Attached hereto as Exhibit 10 is a true and correct copy of XIO-DG-0002049, produced by Defendant in this action.

13. Attached hereto as Exhibit 11 is a true and correct copy of XIO-DG-0002050, produced by Defendant in this action. Also attached are true and correct copies of the web pages listed on this document (downloaded September 29, 2011).

14. Attached hereto as Exhibit 12 is a true and correct copy of XIO-DG-0002059, produced by Defendant in this action.

15. Attached hereto as Exhibit 13 is a true and correct copy of XIO-DG-0002061, produced by Defendant in this action.

16. Attached hereto as Exhibit 14 is a true and correct copy of XIO-DG-0002115, produced by Defendant in this action.

17. Attached hereto as Exhibit 15 is a true and correct copy of XIO-DG-0002089-90, produced by Defendant in this action.

18. Attached hereto as Exhibit 16 is a true and correct copy of Exhibit 51 to the deposition of Desiree Golen, taken in this action on January 28, 2011.

19. Attached hereto as Exhibit 17 is a true and correct copy of XIO-DG-0002722, produced by Defendant in this action.

20. Attached hereto as Exhibit 18 is a true and correct copy of XIO-DG-0002152, produced by Defendant in this action.

21. Attached hereto as Exhibit 19 is a true and correct copy of XIO-DG-0002153, produced by Defendant in this action.

22. Attached hereto as Exhibit 20 is a true and correct copy of XIO-DG-0002154, produced by Defendant in this action.

23. Attached hereto as Exhibit 21 is a true and correct copy of XIO-DG-0002353, produced by Defendant in this action.

24. Attached hereto as Exhibit 22 is a true and correct copy of NEU0000007-10 and attachment, produced by non-party Jeffrey C. Neu in this action.

25. Attached hereto as Exhibit 23 is a true and correct copy of excerpted

pages of the deposition of Desiree Golen, page 218:19-21, taken in this action on January 28, 2011.

26. Attached hereto as Exhibit 24 is a true and correct copy of excerpted pages of the deposition of Jacob Rus, pages 322:23-323:1, taken in this action on February 2, 2011.

27. Attached hereto as Exhibit 25 is a true and correct copy of excerpted pages of the deposition of Mario Balibrera, page 13:15-21, taken in this action on December 10, 2010.

28. Attached hereto as Exhibit 26 is a true and correct copy of excerpted pages of the deposition of Mario Balibrera, page 17:1-3, taken in this action on December 10, 2010.

29. Attached hereto as Exhibit 27 is a true and correct copy of excerpted pages of the deposition of Mario Balibrera, pages 60:18-61:3, taken in this action on December 10, 2010.

30. Attached hereto as Exhibit 28 is a true and correct copy of excerpted pages of the deposition of Mario Balibrera, page 144:1-3, taken in this action on December 10, 2010.

31. Attached hereto as Exhibit 29 is a true and correct copy of excerpted pages of the deposition of Mario Balibrera, pages 144:19-147:25, taken in this action on December 10, 2010.

32. Attached hereto as Exhibit 30 is a true and correct copy of excerpted pages of the deposition of Desiree Golen, page 191:9-25, taken in this action on January 28, 2011.

33. Attached hereto as Exhibit 31 is a true and correct copy of NEU0000029-30, NEU0000036 and NEU0000037, produced by non-party Jeffrey C. Neu in this action.

34. Attached hereto as Exhibit 32 is a true and correct copy of excerpted pages of the deposition of Michael Carter, pages 215:18-216:1, taken in this action on December 13, 2010.

35. Attached hereto as Exhibit 33 is a true and correct copy of excerpted pages of the deposition of Jacob Rus, pages 325:13-326:22, taken in this action on February 2, 2011.

36. Attached hereto as Exhibit 34 is a true and correct copy of excerpted pages of the deposition of Jacob Rus, page 332:1-333:18, taken in this action on February 2, 2011.

37. Attached hereto as Exhibit 35 is a true and correct copy of TETRIS-XIO-037390, produced by Plaintiffs in this action.

38. Attached hereto as Exhibit 36 is a true and correct copy of the April 15, 2011 Rebuttal Expert Report of Jason S. Begy.

39. Attached hereto as Exhibit 37 is a true and correct copy of excerpted

pages of the deposition of Alexey Pajitnov, pages 156:18-157:17, taken in this action on January 13, 2011.

40. Attached hereto as Exhibit 38 is a true and correct copy of excerpted pages of the deposition of Dr. Ian Bogost, page 24:17-25, taken in this action on May 6, 2011.

41. Attached hereto as Exhibit 39 is a true and correct copy of TETRIS-XIO-015538 & TETRIS-XIO-015541, produced by Plaintiffs in this action.

42. Attached hereto as Exhibit 40 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, page 139:12-19, taken in this action on January 13, 2011.

43. Attached hereto as Exhibit 41 is a true and correct copy of TETRIS-XIO-016436 & TETRIS-XIO-0016440, produced by Plaintiffs in this action.

44. Attached hereto as Exhibit 42 is a true and correct copy of TETRIS-XIO-016962 & TETRIS-XIO-0016966, produced by Plaintiffs in this action.

45. Attached hereto as Exhibit 43 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, pages 127:18-128:8, taken in this action on January 13, 2011.

46. Attached hereto as Exhibit 44 is a true and correct copy of Exhibit 34 to the deposition of Alexey Pajitnov, taken in this action on January 13, 2011.

47. Attached hereto as Exhibit 45 is a true and correct copy of TETRIS-

XIO-016962 & TETRIS-XIO-0016979, produced by Plaintiffs in this action.

48. Attached hereto as Exhibit 46 is a true and correct copy of Plaintiffs' Written Objections and Responses to Xio Interactive Inc.'s Third Set of Interrogatories, served on Defendant herein on February 18, 2011.

49. Exhibit 6 to the deposition of Henk Rogers, taken in this action on February 4, 2011, is the Milton Bradley board game *Tetris*.

50. Attached hereto as Exhibit 48 is a true and correct copies of pages from the following link from Plaintiffs' website: www.tetris.com/products/tetris-link.aspx (downloaded Sept. 27, 2011).

51. Attached hereto as Exhibit 49 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, page 58:5-13, taken in this action on January 11, 2011.

52. Attached hereto as Exhibit 50 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, pages 60:7-61:5, taken in this action on January 11, 2011.

53. Attached hereto as Exhibit 51 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, page 289:2-11, taken in this action on January 11, 2011.

54. Attached hereto as Exhibit 52 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, page 92:16-25, taken in this action on

January 11, 2011.

55. Attached hereto as Exhibit 53 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, page 87:11-17, taken in this action on January 13, 2011.

56. Attached hereto as Exhibit 54 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, page 202:13-20, taken in this action on January 11, 2011.

57. Attached hereto as Exhibit 55 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, pages 164:22-165:2, taken in this action on January 13, 2011.

58. Attached hereto as Exhibit 56 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, pages 21:19-22:2, taken in this action on January 13, 2011.

59. Attached hereto as Exhibit 57 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, page 91:7-11, taken in this action on January 13, 2011.

60. Attached hereto as Exhibit 58 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, page 74:2-7, taken in this action on January 11, 2011.

61. Attached hereto as Exhibit 59 is a true and correct copy of the cover

page and page 14 of Exhibit 14 to the deposition of Henk Rogers, taken in this action on January 11, 2011.

62. Attached hereto as Exhibit 60 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, pages 180:21-181:17, taken in this action on January 13, 2011.

63. Attached hereto as Exhibit 61 is a true and correct copy of the cover page and page 7 of Exhibit 7 to the deposition of Henk Rogers, taken in this action on January 11, 2011.

64. Attached hereto as Exhibit 62 is a true and correct copy of the cover page and page 12 of Exhibit 15 to the deposition of Henk Rogers, taken in this action on January 11, 2011.

65. Attached hereto as Exhibit 63 is a true and correct copy of the cover page and page 18 of Exhibit 16 to the deposition of Henk Rogers, taken in this action on January 11, 2011.

66. Attached hereto as Exhibit 64 is a true and correct copy of the cover page and pages 7-8 of Exhibit 7 to the deposition of Henk Rogers, taken in this action on January 11, 2011.

67. Attached hereto as Exhibit 65 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, pages 62:25-63:17, taken in this action on January 13, 2011.

68. Attached hereto as Exhibit 66 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, page 233:3-12, taken in this action on January 11, 2011.

69. Attached hereto as Exhibit 67 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, page 85:4-86:19, taken in this action on January 13, 2011.

70. Attached hereto as Exhibit 68 is a true and correct copy of the cover page and page 27 of Exhibit 17 to the deposition of Henk Rogers, taken in this action on January 11, 2011.

71. Attached hereto as Exhibit 69 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, pages 71:24-72:17, taken in this action on January 11, 2011.

72. Attached hereto as Exhibit 70 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, pages 90:9-91:3, taken in this action on January 13, 2011.

73. Attached hereto as Exhibit 71 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, pages 43:19-45:21, taken in this action on January 13, 2011.

74. Attached hereto as Exhibit 72 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, page 73:15-21, taken in this action on

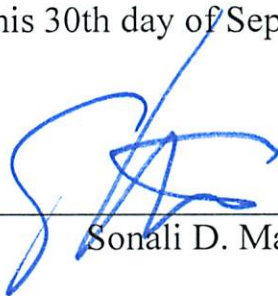
January 11, 2011.

75. Attached hereto as Exhibit 73 is a true and correct copy of excerpted pages of the deposition of Alexey Pajitnov, pages 91:17-92:24, taken in this action on January 13, 2011.

76. Attached hereto as Exhibit 74 is a true and correct copy of excerpted pages of the deposition of Henk Rogers, pages 202:22-203:5, taken in this action on January 11, 2011.

77. On or around May of 2010, Xio removed the following feature from *Mino*: "The appearance of squares automatically filling in the matrix from the bottom to the top when the game is over."

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge. Executed this 30th day of September, 2011 in San Francisco, California.



Sonali D. Maitra

CERTIFICATE OF SERVICE

I certify that on September 30, 2011, I caused a copy of defendant's motion to seal certain documents to be served upon plaintiffs' counsel of record via the Court's electronic filing system.

/s/ Donald A. Robinson

Donald A. Robinson